THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

Docket No. 2006-92-W/S

South Carolina Office of Regulatory Staff,..... Appellant,

v.

Carolina Water Service, Inc.,..... Respondent.

APPELLANT'S RETURN TO NOTICE OF MOTION AND MOTION AND AMENDED NOTICE OF MOTION AND MOTION TO FILE AN *AMICUS CURIAE* BRIEF ON BEHALF OF FORTY LOVE POINT HOMEOWNERS ASSOCIATION

Appellant, South Carolina Office of Regulatory Staff ("ORS"), pursuant to Rule 224(e), SCACR, hereby makes this return to the January 18, 2007, "Notice of Motion and Motion to File an Amicus Curiae Brief" and the March 30, 2007, "Amended Notice of Motion and Motion to File an Amicus Curiae Brief" (hereinafter collectively referred to as the "Motion") filed by the Forty Love Point Homeowners' Association ("HOA"). The underlying appeal arises from orders of the Public Service Commission of South Carolina ("Commission") issued in a case seeking an increase in rates and charges for water and sewer services filed by the Respondent Carolina Water Service, Inc. pursuant to S.C. Code Ann. §58-5-240 (Supp. 2006). The bases for Appellant's return are as follows:

(A) HOA asserts that Appellant "fails to represent the interests of the Forty Love HOA." Appellant is charged with representing the "public interest of South Carolina" before the Commission. S.C. Code Ann. § 58-4-10(B) (Supp. 2006). The "public interest" is defined as "a balancing of ... (1) concerns of the using and consuming public with respect to public utility services, regardless of the class of customer; (2) economic development and job attraction and retention in South Carolina; and (3) preservation of the financial integrity of the state's public utilities and continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services." *Id.* Appellant is not charged with representing individual persons or entities in cases before the Commission.

(B) HOA asserts inadequate notice of the proposed settlement between the parties to the underlying case. HOA was not a party to the case below, and therefore no requirement exists for the parties to provide notice of the settlement agreement to the HOA. However, the settlement agreement was filed with the Commission prior to the hearing and was made public by being posted on the Commission's web site with other matters in this case.

(C) HOA attempts to raise new issues which were not raised before the Commission and to introduce evidence not introduced in the proceeding before the Commission in violation of Rule 213, SCACR and Rule 210, SCACR.

As required by Rule 224(e) and Rule 224(c)(2), SCACR, Appellant submits the accompanying memorandum in support of its return.

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Docket No. 2006-92-W/S

South Carolina Office of Regulatory Staff, ...Appellant,

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MEMORANDUM IN SUPPORT OF APPELLANT'S RETURN TO NOTICE OF MOTION AND MOTION AND AMENDED NOTICE OF MOTION AND MOTION TO FILE AN *AMICUS CURIAE* BRIEF ON BEHALF OF FORTY LOVE POINT HOMEOWNERS' ASSOCIATION

Appellant, South Carolina Office of Regulatory Staff ("ORS"), pursuant to Rules 224(e) and 224(c)(2), SCACR, submits the within memorandum in support of its return to the "Notice of Motion and Motion to File an Amicus Curiae Brief" dated January 18, 2007, and the "Amended Notice of Motion and Motion to File an Amicus Curiae Brief" dated March 30, 2007 (hereinafter both referred to as the "Motion"), filed on behalf of the Forty Love Point Homeowners' Association ("HOA"). All documents referenced in the within memorandum are attached as required by Rule 224(c)(3).

INTRODUCTION/BACKGROUND

Respondent Carolina Water Service, Inc. ("CWS") is a public utility providing water and sewer service in various parts of the State of South Carolina under the jurisdiction of the Public Service Commission of South Carolina ("Commission"). [Order No. 2006-543 at 33.] See S.C. Code Ann. § 58-5-210 (1976). On March 28, 2006, CWS filed with the Commission an application for approval of a new schedule of rates and charges. [Order No. 2006-543 at 2.] See S.C. Code Ann. § 58-5-240 (Supp. 2006). Pursuant to instructions from the Commission, Respondent provided public notice of its application by publishing a Notice of Filing in newspapers of general circulation in the areas of the state served by Respondent and notifying its customers individually as instructed by the Commission's Docketing Department. [Order No. 2006-543 at 2.] The Notice of Filing advised interested persons about the application seeking an increase in rates and charges and also advised interested persons of the manner by which to intervene in the case and become a party of record with right of cross-examination or to request to testify in the hearing before the Commission. [See April 6, 2006 Notice of Filing, Docket No. 2006-92-WS.] Under S.C. Code Ann. § 58-4-10(B) (Supp. 2006), Appellant was automatically made a party of record in the proceeding. No other person or entity intervened in the case as a party of record, but the Commission did receive "numerous letters of protest." [Order No. 2006-543 at 2.] The HOA was among the persons or entities who filed a "letter of protest." [May 3, 2006, letter of Laura P. Valtorta to Commission; August 11, 2006, letter of Laura P. Valtorta to Commission.] The Commission held four (4) "public hearings" in this case on June 8, 12, 13, and 15. [Order No. 2006-543 at 6.] These "public hearings" were held in various parts of the state to

provide customers of the Respondent a convenient forum in which to provide input on the pending application.

After these "public hearings" and after completion of Appellant's audit and examination of Respondent's books and records relative to the application, the parties engaged in settlement discussions on the issues identified by the parties in this case. Appellant is charged with the duty and responsibility under S.C. Code Ann. §58-4-50(A)(9) (Supp. 2006) "to act directly or indirectly to resolve disputes and issues involving matters within the jurisdiction of the [C]ommission." The parties reached a settlement agreement which was filed with the Commission on August 30, 2006, and was later introduced into evidence at the hearing before the Commission on September 7, 2006. [Order No. 2006-543 at 1.]

Ms. Valtorta as representative of the HOA appeared at the hearing on September 7, 2006, and testified as a public witness at the hearing. [Transcript, Hearing # 10786, September 7, 2006, p. 74, l.22 - p. 77, l.7.] Thereafter, on October 2, 2006, the Commission issued its Order No. 2006-543 in which the Commission rejected the parties' settlement and denied the Respondent's application for an increase in rates and charges. Appellant and Respondent timely filed petitions for rehearing of the Commission's orders pursuant to S.C. Code Ann. §58-5-330 (Supp. 2006). On November 27, 2006, the Commission voted to deny the petitions for rehearing filed by the Appellant and the Respondent, and the Commission issued a directive on that date which provided, *inter alia*, that the Commission would "subsequently file a formal final order setting out in more detail the legal reasoning and authority supporting this ruling."

On December 20, 2006, CWS filed with this Court and the Commission, and served upon ORS, a Notice of Appeal in this matter, and on December 27, 2006, ORS filed with this Court and the Commission, and served upon CWS, it's Notice of Appeal in this matter. By letter of the Clerk of this Court dated January 2, 2007, and addressed to counsel for CWS, these appeals were held in abeyance pending the issuance of an additional order by the Commission ruling on the petitions for rehearing of the Commission's orders in the proceeding. Further, the parties were informed that any appeals from an additional order would be combined with the pending appeals. On January 18, 2007, the HOA served a "Notice of Motion and Motion to File an Amicus Curiae Brief." By letter to CWS's counsel dated January 24, 2007, from the Clerk of this Court, the time limits for filing a return to the HOA's motion were held in abeyance pending the issuance of the Commission's additional order. On March 30, 2007, the HOA served an "Amended Notice of Motion and Motion to File an Amicus Curiae Brief." On November 19, 2007, the Commission issued its additional order denying the petitions to intervene of the parties; this order was received by the ORS on November 26, 2007. Appellant ORS filed its second Notice of Appeal on December 27, 2007.

ISSUES/ARGUMENTS

The HOA asserts that Appellant "fails to represent the interests of the Forty Love HOA."

Act 175 (2004) of the South Carolina General Assembly restructured the Commission and created a new agency to represent the "public interest" in public utility regulation in South Carolina. The Appellant ORS is that new agency created by Act 175, and the Appellant is expressly charged in S.C. Code Ann. § 58-4-10(B) (Supp. 2006)

with "represent[ing] the public interest of South Carolina" before the Commission. The "public interest" is defined in the statute as "a balancing of ... (1) concerns of the using and consuming public with respect to public utility services, regardless of the class of customer; (2) economic development and job attraction and retention in South Carolina; and (3) preservation of the financial integrity of the state's public utilities and continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services." S.C. Code Ann. § 58-4-10(B) (Supp. 2006). The Appellant does not represent individual persons or entities in matters before the Commission but represents the public interest as required by statute.

The HOA asserts inadequate notice of a proposed settlement between the parties to the underlying case.

Appellant and Respondent were the only parties in the case. [Order No. 2006-543, p. 1; p.2.] One of the statutory duties of the Appellant is the duty to "act directly or indirectly to resolve disputes and issues involving matters within the jurisdiction of the commission." S.C. Code Ann. § 58-4-50(A)(9) (Supp. 2006). Pursuant to this statutory charge, the parties to the case engaged in settlement discussions on the issues in the case and ultimately executed a settlement agreement resolving the issues identified in the course of Appellant's examination of Respondent's application. The HOA was not a party to the case below, and therefore there was no requirement for the parties to provide notice of the settlement agreement to the HOA. However, the settlement agreement between the parties was filed with the Commission on August 30, 2006, which was several days before the hearing scheduled for September 7, 2007. Further, the settlement

agreement was made public by the posting of the settlement agreement on the Commission's website with the other matters in the docket of this case.

HOA attempts to raise new issues and to introduce new evidence in violation of Rule 213, SCACR and Rule 210, SCACR.

The HOA attempts to raise new issues which were not raised before the Commission and to introduce evidence not introduced in the proceeding before the Commission in violation of Rule 213, SCACR and Rule 210, SCACR.

Rule 213, SCACR, provides that the amicus curiae brief "shall be limited to argument of the issues on appeal as presented by the parties." However, the HOA's Motion contains assertions of law and fact which were not raised before the Commission. The HOA asserts that the Respondent "failed to represent the interests of the Forty Love HOA." [Amended Motion, p. 2, ¶ 2] Yet this assertion was not made before the Commission and was not ruled upon by the Commission in the orders in this case. [Transcript Hearing #10786, September 7, 2006, p. 74, l.22 – p. 77, l.16.] The HOA also maintains that it did not receive adequate notice of the settlement reached by the parties in this matter. [Amended Motion, p. 2, ¶ 3.] Similarly, this issue was not raised to the Commission at the hearing. [Transcript Hearing #10786, September 7, 2006, p.74, l.22 - p.77, l.16.] Because these issues were not raised before the Commission, they cannot be properly considered in this appeal. *See Ransom v. South Carolina Water Resources Comm'n,* 321 S.C. 211, 467 S.E.2d 463 (1996).

Additionally, the HOA seeks to introduce new evidence in this appeal. The HOA attaches to its Motion affidavits of some of its members. [Amended Motion, p. 1 and p. 2, ¶ 4.] The Motion also proposes to include with its brief documents yet to be obtained

from the South Carolina Department of Health and Environmental Control ("DHEC") under a request made pursuant to the South Carolina Freedom of Information Act. [Amended Motion, p. 1.] Neither the affidavits nor the documents to be obtained from DHEC were introduced in the hearings before the Commission; therefore, the documents cannot be part of the Record on Appeal. Rule 210(c), SCACR, states that "[t]he Record shall not ... include matter which was not presented to the lower court or tribunal."

CONCLUSION

By its Return and this Memorandum, Appellant ORS addresses incorrect assertions made in the HOA's Motion. Further, the HOA should not be allowed to raise issues not presented before the Commission nor should the HOA be permitted to present new evidence in this appeal which was not part of the record before the Commission.

Respectfully submitted,

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List of Documents Attached to Memorandum In Support of Appellant's Return to Notice of Motion and Motion and Amended Notice of Motion and Motion to File an *Amicus Curiae* Brief on Behalf of Forty Love Point Homeowners Association

Order No. 2006-543, dated October 2, 2007, issued by the Public Service Commission of South Carolina in Docket No. 2006-92-WS (40 pages)

Notice of Filing, dated April 6, 2006, Docket No. 2006-92-WS (4 pages)

May 3, 2006, letter of Laura P. Valtorta to The Hon Charles Terreni, Chief Clerk/Administrator, SC Public Service Commission (2 pages)

August 11, 2006, letter of Laura P. Valtorta to The Hon Charles Terreni, Chief Clerk/Administrator, SC Public Service Commission (2 pages)

Transcript, Hearing # 10786, September 7, 2006, pp. 74 – 77 (4 pages).

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2006-92-WS - ORDER NO. 2006-543

OCTOBER 2, 2006

IN RE: Application of Carolina Water Service, Inc. for Adjustment of Rates and Charges for the Provision of Water and Sewer Service.	)	ORDER REJECTING SETTLEMENT AND DENYING APPLICATION FOR AN INCREASE IN RATES AND CHARGES

I. INTRODUCTION

This matter before the Public Service Commission of South Carolina ("Commission") arises under the authority of S.C. Code Ann. §§ 58-3-140 (Supp. 2005), 58-5-210 (1976) and 58-5-240 (Supp. 2005) and is governed by 26 S.C. Code Ann. Regs. 103-512.4 (Supp. 2005), 103-712.4 (1976 and Supp. 2005), and 103-804 *et seq.* (1976 and Supp. 2005).

On August 30, 2006, the Commission received a Motion for Settlement Hearing and for Approval of Settlement Agreement ("the Settlement Agreement" or "Set. Agr.") between Carolina Water Service, Inc. ("CWS" or "the Company") and the Office of Regulatory Staff ("ORS") (collectively "the Parties") regarding an application for a rate increase filed with the Commission by CWS. On September 7, 2006, the Commission held a settlement hearing to determine whether the terms of the settlement were just and reasonable. Regrettably, neither the Settlement Agreement nor the hearing provided the

Commission with sufficient evidence to determine whether the rates applied for by CWS are just and reasonable. Therefore, the CWS Settlement Agreement is rejected, and for the same reasons, the application is denied.

II. PROCEDURAL HISTORY

On March 28, 2006, CWS filed the application for a rate increase which gave rise to these proceedings. On April 13, 2006, CWS published a Notice of Filing of the Application in newspapers of general circulation and notified the Company's customers individually as instructed by the Commission's Docketing Department. No Petitions to Intervene were filed; however, numerous letters of protest were received.[1]

On June 27, 2006, after hearing sworn testimony from public witnesses who were concerned that their rates were unfairly subsidizing customers in other subsystems, the Commission asked the Company to supplement its application for an increase in rates and charges with accounting information regarding the operations of its individual subsystems.[2] This information was necessary for the Commission to evaluate the merit of these complaints with the ultimate purpose of aiding the Commission in determining whether circumstances justify a departure from the Company's proposed uniform rate structure.[3]

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[1] It is the Commission's procedure to include all letters received pertaining to a proposed rate increase in the application's docket file.

[2] On May 11, 2006, the ORS submitted a petition to the Commission on behalf of a group of concerned legislators which also urged the Commission to consider financial information on a subsystem basis when making its determination on the Company's application. However, the information ultimately sought by the Commission was different from that which concerned the legislative delegation.

[3] The request for information was issued in a Commission Directive dated June 27, 2006 and memorialized by Order No. 2006-407, dated July 25, 2006.

CWS declined to supplement its application. Instead, in a letter dated June 30, 2006, the Company moved for reconsideration of the Commission's decision to request the information, arguing that the Commission did not have the authority to require the Company to supplement its application, and that the Commission's request for information engaged the Commission in discovery and amounted to its participating as a party of record in the case, violating Canon 3 of the Code of Judicial Conduct Rule 501, SCACR.[4] CWS also asserted that it "did not have in its possession" documents which would be responsive to the request. The Company further suggested that the Commission's request "could be interpreted" as an improper response to public pressure, and a violation of Canon 3.B.2 of the Code of Judicial Conduct. CWS did not argue that the information lacked relevance to the proceedings, or that it was incapable of compiling the information.

On July 12, 2006, the Commission responded to CWS's request for reconsideration, stating that it was not seeking to participate in the case as a party of record, had not served a "discovery request" on the Company, and "did not order Carolina Water Service to amend its application .... Instead, the Commission asked the Company to supplement its application with additional information for the test year in question." Order 2006-458, (dated August 4, 2006). The Commission observed that CWS bears the burden of proof in the case and "is free to respond – or not respond – as it sees fit." Id. The Commission also reassured the Parties that it was not swayed by public

[4] The ORS concurred with CWS's position. Letter from C. Lessie Hammonds, July 3, 2006.

pressure. Id. at 4. CWS made no further arguments regarding the Commission's request, nor did it submit any information responsive to the request.

On August 30, 2006, the Parties filed the proposed Settlement Agreement with the Commission. In support of the Agreement, the Parties submitted the prefiled written direct testimonies of Company witnesses Steven M. Lubertozzi and Bruce Haas, and their retained expert witnesses Converse A. Chellis, III, C.P.A., and B.R. Skelton, PhD. Set. Agr. at 2-3. The Parties also agreed to include the prefiled written direct testimonies of ORS witnesses Sharon G. Scott and Dawn Hipp. Id. However, the Parties proposed to severely limit the number of witnesses subject to live testimony before the Commission, instead proposing to call only witnesses Skelton and Chellis to the stand, and moving to stipulate the prefiled written testimonies of the remaining witnesses. Expl, Br. at 2 (dated August 30, 2006).

On September 6, 2006, after reviewing the Settlement Agreement and its stipulated prefiled written testimonies, the Commission brought specific concerns regarding the agreement to the attention of the Parties. In a directive on this date, the Commission alerted the Parties to unanswered questions in the record regarding: 1) the fairness of the proposed uniform rate structure, 2) the Company's response to public witness' reports of sewerage backups and the maintenance of its lines, 3) the Company's proposed flat rate billing tariff for sewerage services, 4) the proposed recovery of $385,497 in rate case expenses, and 5) compliance with applicable PSC regulations in regard to notice of violations of applicable DHEC standards. Comm. Directive (dated September 6, 2006)(attached as Exhibit A to this Order).

At the settlement hearing held on September 7, 2006, John M.S. Hoefer, Esquire, and Benjamin Mustian, Esquire, represented CWS. Nanette S. Edwards, Esquire, Shannon B. Hudson, Esquire, and C. Lessie Hammonds, Esquire, represented the Office of Regulatory Staff. The Company only called expert witnesses Skelton and Chellis to testify in support of the settlement.

Skelton testified generally that the return on equity proposed in the Settlement Agreement is a sufficient return which the capital market would expect in the context of a settlement, that administrative economy supports Commission approval of the proposed settlement, and that settlements should be favored. Tr. 84-90 (Vol. 5). Chellis generally testified that the settlement was a reasonable means of resolving the disputed issues in the case, and that it fairly balanced the interests of the Company and its customers. Tr. 78-84 (Vol. 5). Neither witness provided testimony concerning the unresolved issues of fact previously raised by the Commission related to the proceeding. Both witnesses testified that they had no knowledge or opinion as to any of the issues raised by the Commission in its directive of September 6, 2006, and stated they had not been retained to address these matters. Tr. 81-84, 88-90 (Vol. 5).

With unresolved questions of fact remaining in the record and a lack of evidence presented by the Parties, the Commission voted to reject the Settlement Agreement. Comm. Directive (September 8, 2006). Following the Commission's rejection of the Settlement Agreement, a final hearing in the case was rescheduled for September 18,

2006.[5] Id. The Commission observed that the Company had the option of either requesting approval of the rates agreed to in its settlement (presumably with the support of additional evidence) or requesting that the Commission approve the rates and charges for which it originally applied.[6] Id. CWS advised the Commission of its position that "the Parties have presented to the Commission all evidence that they believe is necessary for the Commission to issue an order on the Settlement Agreement, no additional evidence in the docket is needed inasmuch as CWS would not offer any evidence beyond that already presented to the Commission, and therefore no further hearing is necessary." CWS Letter (dated September 15, 2006). The ORS concurred. ORS Letter (dated September 15, 2006). Subsequent to these communications from the Parties, the Commission cancelled the hearing scheduled for September 18, 2006. On September 20, the Commission voted to deny CWS's application. Comm. Directive (dated September 20, 2006).

III. RULING ON CAROLINA WATER SERVICE'S OBJECTIONS

A. CWS's objections to the Commission's consideration of public testimony are not consistent with the Commission's duties in the rate setting process, and are overruled.

Four public hearings were held in this Docket on June 8, 12, 13, and 15, 2006, and a settlement hearing was held on September 7, 2006. At each of these hearings, CWS raised a continuing objection to the Commission receiving customer testimony,

[5] The law requires the Commission to issue a final order in a rate case within six months of the filing of the application. S.C. Code Ann. § 58-5-240 (Supp. 2005).

[6] Indeed, this option is contemplated in paragraph 11 of the Settlement Agreement, which provides "if the Commission should decline to approve the agreement in its entirety, then any Party desiring to do so may withdraw from the Settlement Agreement without penalty or obligation."

documents, and related exhibits "consisting of unsubstantiated complaints regarding customer service, quality of service, or customer relation issues."[7] Tr. 7-9 (Vol. 1); Tr. 9-10 (Vol. 2); Tr. 7-9 (Vol. 4); Tr. 7-8 (Vol. 5). Through this objection, CWS claims reliance on such testimony denies due process of law, permits customers to circumvent complaint procedures, and is an inappropriate basis for the adjustment of just and reasonable rates. Tr. 8 (Vol. 1); Tr. 9-10 (Vol. 2); Tr. 8 (Vol. 4). In support of these arguments, CWS cites Patton v. Public Service Commission, 280 S.C. 288, 312 S.E.2d 257 (1984), the Order in the Court of Common Pleas in Tega Cay Water Service v. S.C.P.S.C. C/A No. 97-CP-40-0923 (September 25, 1998), and the Commission's Order No. 1999-191 in Application of Tega Cay Water Service, Inc, Docket No. 96-137-WS. Id. However, these cases fail to support CWS's general argument that the Commission has denied it due process, nor do the cases stand for the proposition that the Commission's complaint process was unlawfully circumvented when the Commission heard public testimony regarding customer service complaints.

First, no due process violations exist. The Company had the opportunity to file responses to its customers' testimony, and it did so. CWS Letter (dated August 23, 2006). In addition, the Company had the opportunity to cross-examine witnesses and took advantage of that opportunity as well. Tr. 17-19. 34 (Vol. 1); Tr. 20-22, 58-59, 65-66, 90-91 (Vol. 2); Tr. 19-22, 42-43, 50-51 (Vol. 4); Tr. 27-52, 64, 71-73, 76-78 (Vol. 5).

Second, there has been no circumvention of complaint procedures. The evening public hearings held in this case were for the express purpose of garnering public opinion

[7] No objection was made during the public hearing of June 13, 2006 (Volume 3 of the transcript), since no one testified.

regarding the proposed rate increase. In a rate proceeding, "quality of service" is a long-established element of what this Commission must consider in arriving at just and reasonable rates for the Company. Customers' complaints regarding the Company's service are a component of "quality of service." Furthermore, nothing in the Commission's statutory authority or the regulations governing the Commission that allow for customer complaints indicates that the customer complaint-filing process is the exclusive vehicle for raising issues regarding a company's quality of service. See 26 S.C. Code Ann. Regs. 103-835 (1976).[8]

It is ORS' position that the challenged customer testimony is admissible in these proceedings. Tr. 9-10 (Vol. 1); Tr. 10-11 (Vol. 2); Tr. 9-10 (Vol. 4). The ORS also argues that the cases cited by CWS fail to support its grounds for objection. Id. In addition, ORS requested that CWS submit letters to the Commission specifying objectionable portions of public testimony and the specific reasons for its opposition.[9] Id.

[8] The regulation states in pertinent part: "Any person complaining of anything done or omitted to be done by any person under the statutory jurisdiction of the Commission in contravention of any statute, rule, regulation or order administered or issued by the Commission, may file a written complaint with the Commission, requesting a formal proceeding..." S.C. Code Ann. Regs. 103-835 (1976).

[9] On August 23, 2006, CWS responded to ORS's request to produce a letter specifying its objections to certain public testimony and the reasons for its opposition by filing a letter with the Commission. In this letter, CWS restates its continuing objection to unsubstantiated testimony for the unsupported reasons that it denies due process and unlawfully circumvents complaint procedures. It then proceeds to simply list the witnesses it opposes under this blanket objection. In the letter's closing, without referencing specific witnesses, it does finally state general reasons for the objection, which include assertions that "customers' testimony does not reflect the timeframe of the issues complained of, whether the customers complained to the company, or whether the customers filed a formal complaint with the Commission." It ends by stating that the amount of customers heard at the public hearings is a small percentage of its customers, and it considers this level of customer complaints as "de minimus and immaterial."

As a state agency charged with setting rates that are just and reasonable, the South Carolina Public Service Commission considers all customer complaints in some fashion. This consideration of public testimony is most readily apparent in Hilton Head Plantation Utilities v. The Public Service Commission of cont...

The Commission holds that public testimony may be admitted into the record of these proceedings. The cases cited by CWS merely stand for the principle that, while customer service is a factor to be considered in determining a reasonable rate of return in a rate proceeding, a reduction in rates based on poor quality of service must be supported by substantial evidence in the record, must not be confiscatory, and must remain within a fair and reasonable range. Patton, 312 S.E.2d at 260 ("the Commission must be allowed the discretion of imposing reasonable requirements on its jurisdictional utilities to insure that adequate and proper service will be rendered to the customers of the utility companies."). Each of the cases cited by CWS is discussed in greater detail below.

In Patton, the South Carolina Supreme Court affirmed the premise that quality of service is a "[necessary]" factor among other considerations in determining a just and reasonable operating margin when approving a rate increase. Id. (citing State Ex rel. Util. Com'n v. General Tel. Co., 285 N.C. 671, 208 S.E.2d 681 (1974)). In this case, a company offering sewage services appealed a Commission's rate determination that approved a lower rate increase than what the company requested. Id. The South Carolina Supreme Court found that "[determining] a fair operating margin is peculiarly

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South Carolina, 312 S.C. 448, 441 S.E.2d 321 (1994), where the Commission's denial of a water company's rate increase, based in part on the testimony of only one customer, was upheld by South Carolina's Supreme Court. At a minimum such testimony has the potential of making the Commission aware of areas in which a company needs to provide more evidence before granting a rate increase.

Also, the particular objections which CWS has made to public hearing testimony are not specific. When CWS states its grounds for excluding public testimony (such as a complaint being stale if it is outside the time frame of the test year or the Company not having an opportunity to rectify a problem if a complaint was never made to the Company) it fails to connect these grounds to a customer's specific testimony. An appellant must make a specific objection to the admission of evidence to preserve the issue for appeal. Abba Equipment, Inc. v. Thomason 335 S.C. 477, 486, 517 S.E.2d 235, 240 (S.C.App., 1999) (citing McKissick v. J.F. Cleckley & Co., 325 S.C. 327, 479 S.E.2d 67 (Ct.App.1996)).

within the province of the Commission and cannot be set aside in the absence of showing that it is unsupported by substantial evidence in the record." Id. at 258. To reach this finding, the Court noted that S.C. Code Ann. § 58-5-210 (1976) vests the Commission with authority to supervise and regulate the rates and service of every utility in the state. It concluded that substantial evidence in the record existed to support the Commission's concern regarding the company's quality of service.

Next, the Order in the Court of Common Pleas in Tega Cay Water Service v. S.C.P.S.C. resulted from an appeal by Tega Cay Water Services, Inc. of Commission Order No. 96-879 (the "TCWS Order"). This Circuit Court opinion expands the holding in Patton by maintaining that customer testimony related to poor quality of service, if not corroborated by other substantial evidence in the record, fails to support a Commission order giving an insufficient rate of return. The rate of return in this case was 0.23%, which prevented the utility from recovering expenses and the capital costs of doing business, according to the Court. TCWS Order at 6.

In the TCWS case, the Commission admitted that the Company's return was insufficient but argued that such a low return was warranted by customer complaints about the quality of service rendered by the Company. Id. However, the Circuit Court stated that the Commission made this determination solely on the complaints of six customers out of a total customer base of 1,500 people, despite the Commission's staff finding that TCWS provided acceptable service. Id. at 2-7. The Circuit Court held that these six customer complaints were not sufficient, alone, to support the Commission's determination. It further held that the Commission may not credit testimony such as

"dirty water" as evidence of poor service quality, and must explicitly find the service was substandard according to some ascertainable criteria. See Id. at 7-8.

In reversing the Commission's Order, the Circuit Court went on to state that the Commission failed to satisfactorily provide a standard for determining what constitutes adequate service or indicate what increases in rates would have been approved had the services been found adequate. Id. at 8. It remanded the case with instructions for the Commission to set a rate that was not confiscatory and remained within a fair and reasonable range. See Id. at 6-7, 9. On remand in Order No. 1999-191, the Commission avoided relying on customer complaints. Order on Remand at 1.

The logic of the cases cited by CWS is evident after considering the standard of review the Commission is held to in the appellate process. Justice Harwell stated the standard of review succinctly in Patton v. Public Service Commission:

> Pursuant to S.C. Code Ann. § 1-23-380 (1982), a court may not substitute its judgment for that of the Commission as to the weight of the evidence on the question of fact. The findings of the Commission are presumptively correct and have the force and effect of law. South Carolina Electric and Gas Co. v. Public Service Commission, 275 S.C. 487, 272 S.E.2d 793 (1980). Therefore, the burden of proof is on the party challenging an order of the Commission to show that it is unsupported by substantial evidence and that the decision is clearly erroneous in view of the substantial evidence on the whole record. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). The Public Service Commission is recognized as the "expert" designated by the legislature to make policy determinations regarding utility rates; thus the role of the court reviewing such decisions is very limited. See, e.g. Southern Bell Tel. and Tel. Co. v. Public Service Comm., 270 S.C. 590, 244 S.E.2d 278 (1978).312 S.E.2d at 259.

Under this standard of review, it is necessary for the Commission to base its findings on substantial evidence that is supported by the record in order for courts to look back and know that Commission decisions are grounded on fact.

With this mandate in mind, the Commission does not agree with CWS's apparent argument that these cases stand for the proposition that the Commission is not entitled to consider the testimony and evaluate the credibility of public witnesses in the ratemaking process. CWS essentially argues that the testimony of public witnesses is "unsubstantiated" and therefore may not be considered. Tr. 7-9 (Vol. 1); Tr. 9-10 (Vol. 2); Tr. 7-9 (Vol. 4); Tr. 7-8 (Vol. 5). However, neither the cases cited by CWS, nor other precedents in rate cases, support such a conclusion. If this argument were accepted, there would be no purpose for public hearings, admittedly a result advantageous to a company such as CWS, which has been subjected to a great deal of criticism by its customers, but also a result which is contrary to Supreme Court precedent, which has recognized the role of public testimony in the rate making process. Patton, 312 S.E.2d at 260; Seabrook Island Property Owners Association v. South Carolina Public Service Commission, 303 S.C. 493, 401 S.E.2d 672, 675 (1991)(stating "It is incumbent upon the PSC to approve rates which are just and reasonable,...considering the price at which the company's service is rendered and the quality of that service.")

At a minimum, public testimony may alert the Commission to potential quality of service issues and prompt it to engage in further inquiry, as it did in this case, when it asked the Parties for additional information about sewage backups.

Other concerns expressed by customers, such as those about the fairness of the flat rate structure, or even the appropriateness of a uniform system wide tariff for CWS's different systems throughout the state, do not depend on such an evidentiary foundation. These concerns are conceptual in nature and based on the Company's proposed rates. CWS cannot complain that testimony regarding these latter topics is "unsubstantiated" because the testimony is rooted in the company's own application.

B. CWS' objections to the testimony of Paul Hershey, Don Long and Brenda Bryant are overruled.

Paul Hershey testified at the September 7, 2006 settlement hearing. Tr. 67-74 (Vol. 5). CWS objected to the testimony of Hershey on the grounds that Mr. Hershey was not an intervenor in the case, and it also argued that Mr. Hershey had ceded his time to witness Don Long. Tr. 67 (Vol. 5). The objection is overruled. Under Commission practice, Hershey did not need to intervene in order to testify as a public witness at the hearing. An intervenor in a case before the Commission must respond to discovery requests and prefile testimony. However, an intervenor also enjoys the right to propound discovery requests and cross-examine witnesses; rights which Hershey did not have in these proceedings. Furthermore, it is clear to the Commission that Hershey did not cede his time to Long.

The Company specifically objected to the testimony of public witnesses Long and Brenda Bryant in two public hearings. Tr. 7-8 (Vol. 5). Long testified at the June 12, 2006 public hearing and the September 7, 2006 settlement hearing. Tr. 25-42 (Vol. 2); Tr. 8-64 (Vol. 5). Bryant testified at the June 15, 2006 public hearing and the September 7, 2006 settlement hearing. Tr. 10-22 (Vol. 4); Tr. 91-99 (Vol. 5). CWS objected to the

final hearing testimony of both Long and Bryant on the basis that they were allowed to testify at the public hearings as well as at the final hearing in this case. Tr. 39-40 (Vol. 2); Tr. 7-8 (Vol. 5); Tr. 90 (Vol. 5). Although the Commission's legal advisor originally informed those in attendance of the Commission's customary policy that public witnesses would only be allowed to testify once, not at both the public hearing and the final hearing, it is within the Commission's discretion to allow any lawful evidence it deems necessary into the record.[10] When the Commission believes that a public witness has additional information to contribute, the Commission is within the bounds of its discretion to allow such a witness to testify more than once.[11]

CWS also objected to Long's testimony on other grounds, arguing that "because the Parties of record in this case have settled the matter, there is not a contested matter before the Commission, and therefore his testimony should not be allowed." Tr. 8 (Vol. 5). This matter is discussed thoroughly throughout this order. However, if the Commission were to follow CWS's position, public witnesses would not be given a

[10] This position is also stated in the Hearing Officer's Directive (dated August 29, 2006), overruling CWS's objection to the Commission allowing the public to testify at more than one hearing.

[11] The Public Service Commission is granted broad latitude under South Carolina law to set utility rates at levels it deems just and reasonable. South Carolina law requires the courts to defer to the judgment of the Commission and to affirm Commission decisions where they are supported by substantial evidence, and not to substitute their judgment for that of the Commission where "there is room for a difference of intelligent opinion." Kiawah Property Owners Group v. Public Service Com'n of S.C., 357 S.C. 232, 237, 593 S.E.2d 148, 151 (2004), citing Total Envtl. Solutions, Inc. v. S.C. Pub. Serv. Comm'n, 351 S.C. 175, 568 S.E.2d 365 (2002); Heater of Seabrook, Inc. v. Pub. Serv. Comm'n of S.C., 324 S.C. 56, 478 S.E.2d 826 (1996).

Furthermore, PSC's findings are presumptively correct, and will only be overturned where they are "clearly erroneous in view of the substantial evidence on the whole record." Kiawah Property Owners Group v. Public Service Com'n of S.C., 357 S.C. 232, 237, 593 S.E.2d 148, 151 (2004); Duke Power Co. v. Public Service Com'n of S.C., 343 S.C. 554 558, 541 S.E.2d 250, 252 (S.C. 2001). As a matter of law, there can be no finding of an abuse of discretion where substantial evidence supports the finding of a just and reasonable rate. Kiawah Property Owners Group v. Public Service Com'n of S.C., 357 S.C. 232, 241, fn. 5, 593 S.E.2d 148, 153, fn. 5 (2004).

meaningful opportunity to testify regarding any Settlement Agreement. Indeed, the Commission itself, left without a contested matter to review, would be reduced to providing a "rubber stamp" to Settlement Agreements between utilities and the ORS. This outcome is patently inconsistent with the Commission's statutory obligation to review and approve proposed rates and charges, whether presented by settlement or in a contested case. The objection is overruled.

IV. DISCUSSION

Throughout this proceeding, the Commission has alerted the Parties to its concerns about the rates proposed in the Company's application and the quality of its service. Comm. Directive (dated June 27, 2006); Comm. Directive (dated July 12, 2006); Order No. 2006-458 (dated August 4, 2006); Comm. Directive (dated September 6, 2006); Tr. 81-84, 88-89 (Vol. 5); Comm. Directive (dated September 20, 2006). The Commission made clear that these issues had to be resolved in the course of its consideration of the case. Comm. Directive (dated September 6, 2006). The Parties were either unable or unwilling to address these issues to the Commission's satisfaction, and therefore the Commission is left with no choice but to reject CWS's application.

The Commission has the statutory mandate under S.C. Code Ann. Section 58-5-210 (1976) to fix just and reasonable standards and, therefore, just and reasonable rates. Because S.C. Code Ann. Section 58-5-240(H) (Supp. 2005) requires the Commission to approve "fair" rates that are "documented fully in its findings of fact... based exclusively on reliable, probative, and substantial evidence on the whole record," the Parties have repeatedly been invited to provide additional evidence addressing these concerns.

Comm. Directive (dated June 27, 2006); Comm. Directive (dated July 12, 2006); Order No. 2006-458 (dated August 4, 2006); Tr. 81-84, 88-89 (Vol. 5). Unfortunately, the Parties have failed to provide such evidence. See Seabrook Island Property Owners Ass'n. v. South Carolina Public Service Com'n, supra, ("It is incumbent upon the Public Service Commission to approve rates which are just and reasonable....") 303 S.C. at 499, 401 S.E. 2d at 675. See also Kiawah Property Owners Group v. The Public Service Com'n of South Carolina, 357 S.C. 232 593 S.E. 2d 148 (2004).

The Commission's duty to independently review an application has been recognized by the South Carolina Supreme Court. In Hilton Head Plantation Utilities, Inc. v. Public Service Com'n of South Carolina, supra., a public witness raised questions at the hearing about the reasonableness of payments from the utility to certain affiliated companies. During the course of the Hilton Head Plantation case, the applicant had asserted, without further explanation, that the payments were reasonable. The Commission staff and the Consumer Advocate (whose advocacy roles have since been assumed by the ORS) did not challenge the payments.

However, the Commission became concerned about the affiliate transactions after hearing from a public witness in the case who challenged their reasonableness. Because the Parties had not actively contested the issue, the record contained virtually no information which would allow the Commission to independently determine the appropriateness of the applicant's transactions with its affiliated companies. The Commission denied the company's rate increase explaining:

> The Commission believes that [public witness] Pilsbury's statement raises questions about seemingly less-than-arms-

> length transactions taking place between Hilton Head Plantation Utilities, Inc. and Hilton Head Plantation Limited Partnership. .... **The Commission holds that the record before it fails to provide the answers to these questions.**
> 312 S.C. at 449, 441 S.E.2d at 322. (emphasis added)

Affirming the Commission, the Supreme Court explained:

> The PSC must review and analyze intercompany dealings and determine if they are reasonable; if there is an absence of data and information from which the reasonableness and propriety of the services rendered and the reasonable cost of rendering such services can be ascertained, the allowance is properly refused. Id.
> 312 S.C. at 449, 441 S.E.2d at 322.

The Court affirmed the Commission's denial of the rate increase, and remanded the case so that the Commission could pursue the issue of payments to affiliated companies in more depth. The Supreme Court explained:

> Conceivably the Utility may be entitled to that increase or some other increase. We hold that neither the circuit court nor the Commission erred in refusing the rate increase sought. The matter might be logically pursued within this action upon remand or by way of a new application as suggested by the Commission. Under the showing made, we think it more logical to remand the case to the Commission so that the Utility will have an ample opportunity to explain its expenditures and justify them
> 312 S.C. at 451-452, 441 S.E.2d at 323.

The Hilton Head Plantation case affirms the Commission's right of independent inquiry. In Hilton Head Plantation, as in the present case, the Commission independently inquired of an issue raised by a public witness. The Commission pursued its inquiry in spite of the fact that the parties to the case were not contesting the issue of affiliate transactions; it was only raised by a public witness. Faced with a lack of

information which addressed its concerns, the Commission was left with no choice but to deny the applicant's proposed rate increase.

A. The Commission's inquiries were essential to its evaluation of the proposed rates.

This case is unusual because if the Parties had provided a meaningful response to the Commission's concerns, it is possible that the proposed settlement rates would have been approved. Yet, the Parties consciously chose not to respond to the Commission's inquiries, leaving the Commission with no choice but to reject the settlement and the Company's application based on the lack of evidence presented.[12] The course taken by

[12] The Commission' view of its role in the settlement process was well known to the Parties from the outset of this case. The Commission adopted and disseminated Settlement Policies and Procedures (Revised 6/13/2006). These procedures, which were specifically endorsed by the Office of Regulatory Staff, (See letter of C. Dukes Scott dated April 3, 2006) expressly contemplated that the Commission could request more evidence in the process of approving a settlement. According to Section II of this document, approval of a settlement "shall be based upon substantial evidence in the record." However, as described above, substantial evidence is plainly lacking in this case.

Section III of the Settlement Policies and Procedures provides that "Proponents of a proposed settlement carry the burden of showing that the settlement is reasonable, in the public interest, or otherwise in accordance with law or regulatory policy. Proponents of the settlement should be prepared to call witnesses and argue in favor of the settlement." Nevertheless, the proponents of the settlement in the present case simply failed to carry the burden of showing that the settlement is reasonable or in the public interest.

Section IV of the Policies and Procedures further states that "If the Commission rejects the settlement, the matter shall continue, as though no settlement had been presented." In addition, this section contemplates a merits hearing to be held after rejection of a settlement. The Parties had the opportunity to more fully present their case at a merits hearing, if they chose to do so. Regrettably, the Parties simply chose not to provide the requisite evidence necessary for the Commission to make a determination on the merits of the application.

Finally, Section V of the Settlement Procedures provides that "The Commission may require evidence of any facts stipulated, notwithstanding the stipulation of the Parties." In the present case, although provided with an opportunity, the Parties chose to ignore the directives of this Commission to provide additional information. Section V notes, "If the Commission finds that the record lacks substantial evidence to support the settlement, the Commission may establish procedures for the purpose of receiving additional evidence upon which a decision on the proposed settlement may reasonably be based."

The Commission attempted to provide such procedures after the initial rejection of the settlement. However, the Parties rejected the procedures, and simply indicated that they did not wish to present any more evidence in support of the case, even after further discussion with the Hearing Officer explaining the intent of the procedures.

In sum, although the Parties claimed to have filed their August 30, 2006 Explanatory Brief and Joint Motion for Settlement Hearing and for Adoption of Settlement pursuant to "the Settlement Policies

the Parties has caused the central issue in this case to be as much about the Commission's authority and discretion in ratemaking proceedings as about the particulars of the Company's application and its rates and service.

While the law is clear that the Commission's decisions are to be given substantial deference by a reviewing court, such deference is not without limits. The South Carolina Supreme Court has found that the law requires the Commission to make specific and detailed findings of fact to support its conclusions. The Supreme Court held "In determining a fair rate of return on common equity ..., PSC must fully document its findings of fact and base its decision on reliable, probative, and substantial evidence on the whole record. Porter v. S.C. Public Service Comm'n and Piedmont Natural Gas Co., 332 S.C. 93, 504 S.E. 2d 320 (1998), and also:

> An administrative body must make findings which are sufficiently detailed to enable this Court to determine whether the findings are supported by the evidence and whether the law has been applied properly to those findings. Where material facts are in dispute, the administrative body must make specific, express findings of fact. An administrative agency is not required to present its findings of fact and reasoning in any particular format, although the better practice is to present them in an organized and regimented manner. However, a recital of conflicting testimony followed by a general conclusion is patently insufficient to enable a reviewing court to address the issues.
> Porter v. S.C. Public Service Com'n and BellSouth Telecommunications, Inc., 333 S.C. 12, 21, 507 S.E.2d 328, 332 (S.C. 1998).

Consistent with its obligations, the Commission's questions in this case, as posed in its directives of June 27, 2006, and September 6, 2006, requested information that is pertinent to the Commission's review of the proposed settlement as well as the

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and Procedures established by the Public Service Commission", it was actually filed in derogation of those policies.

Company's application in this case. Following is a detailed discussion of the Commission's requests, the Parties' responses, and the significance of the information to this rate making proceeding.

1. Request for financial data concerning CWS's subsystems.

On June 27, 2006, the Commission requested financial data regarding the individual subsystems operated by CWS. CWS declined to provide any information responsive to this request. The Company asserts that it "maintains records pertaining to its assets, expenses and revenues on a statewide basis and not on a system or subdivision basis" citing the Supreme Court's holding in August Kohn and Co., Inc. v. Public Service Commission and Carolina Water Service, Inc., 281 S.C. 28, 313 S.E.2d 630 (1984). CWS Letter at 2 (dated June 30, 2006). However, the Supreme Court's holding in August Kohn fails to stand for the proposition that a uniform rate structure is the only appropriate rate structure for the company.

In August Kohn, the Supreme Court affirmed the Commission's decision to impose a "plant expansion fee" on all of the company's ratepayers. 313 S.E.2d at 631. An intervenor in the case appealed the decision, arguing that the expansion fee would not be used to finance facilities in his individual subdivision, and he should not be forced to pay the fee. Id. Affirming the Commission's decision, the Court recognized that:

> In the law of utilities regulation, particularly in the context of water service, the rule appears to be as follows:
> Normally, the unit for rate-making purposes would be the entire interconnected operating property used and useful for the convenience of the public in the territory served, without regard to particular groups of consumers of local subdivisions; but conditions may be such as to require or permit the fixing of a smaller unit. 94 C.J.S. Waters Section 293, p.

182; also Section 297. Exceptions to the above rule are not frequent and are generally the product of special facts and circumstances. Id.

August Kohn is inapposite for several reasons. In the present case, the Commission has not deviated from a uniform rate structure. Instead, the Commission merely sought information which would aid it to determine whether circumstances exist which may warrant a departure from uniform treatment in one or more of the company's subdivisions. The Parties have sought to foreclose this inquiry altogether by withholding information responsive to the Commission's request.

At this juncture, the issue before the Commission, therefore, is not whether a uniform rate structure is appropriate for CWS in light of August Kohn and other rate making principles. Instead, the issue is the Commission's right to inquire about the appropriateness of a uniform rate structure, and whether it has been furnished sufficient information to conduct such an inquiry. The Commission concludes that it has not received enough information to meaningfully evaluate the uniform rate structure proposed by the Parties.

Moreover, August Kohn's continued applicability to the present operations of Carolina Water System's operations is open to question. The August Kohn decision and the City of New Haven v. New Haven Water Co. case on which it relies, refer to the desirability of a uniform rate structure for an "interconnected operating property." August Kohn and Co., Inc. v. Public Service Com'n of South Carolina, 281 S.C. 28, 30, 313 S.E.2d 630, 631(1984), (citing City of New Haven v. New Haven Water Co. 172 A. 767, 777 (Conn. 1934) (stating "Where water furnished is all secured from the same sources, and is supplied to several contiguous communities embraced in one general

district, with no unreasonable extensions to serve lean territory or other elements creating material difference in cost, a uniform rate for the entire territory is indicated and ordinarily justified.")). CWS's properties are far flung across the state, and for the most part are not interconnected. Therefore, the rationale of August Kohn, which was decided twenty-two years ago on the basis of limited facts, is not clearly controlling in the present case.

In the pre-filed rebuttal testimony of Steven M. Lubertozzi, attached as Exhibit D to the Settlement Agreement, Lubertozzi states: "The Company has never accounted for the River Hills system except as part of our statewide system."[13] P. 8, ll. 8-20. Mr. Lubertozzi also testifies that it would be an "inaccurate statement" to assert that the Carolina Water Service customers of the River Hills community in York County are "subsidizing the remainder of the [CWS] water and sewer systems across South Carolina." Id. He also asserts that rates for customers in some newer subdivisions would increase dramatically if the Commission were to depart from uniform billing for the various CWS subsystems. P. 9, ll. 14-16. However, there is no evidentiary basis in the record for these assertions, and no evidence, other than Lubertozzi's conclusory testimony, was offered by the Parties to address this issue.

Based on these statements, this Commission proceeded to request more information in its Directive of September 6, 2006, in order to attempt to understand this testimony and decide if the uniform rate structure remains just and reasonable. Unfortunately, Lubertozzi was not presented to testify at the hearing and no further

[13] River Hills is the community which is the subject of Mr. Long's testimony regarding its potential cross subsidization of other CWS subsystems.

testimony and/or evidence was presented on this issue during the settlement hearing on September 7, 2006.

As noted, Lubertozzi stated that the Company's records are kept on a statewide basis. P. 11, l. 5. However, the Commission notes that while this rate case was pending, CWS filed an Application for approval of the transfer (i.e. sale) of its water and sewer systems and territory serving the Kings Grant, Plantation Ridge, and Teal on the Ashley Subdivisions to Dorchester County. See Docket No. 2006-171-WS, Order No. 2006-497. Clearly, the Company was able to break down its records so as to provide information on the systems in these individual subdivisions. In fact, in a motion requesting modification of this case's scheduling order, CWS asserted that the sale of these assets would have an impact on the rate base, expenses, and revenues which were the subject of the application, and that CWS and ORS were analyzing and quantifying the impact. CWS Letter, (dated June 20, 2006).

Furthermore, ORS witness Scott's pre-filed settlement testimony and exhibits reference adjustments ORS was able to make to the rate base calculations based on the proposed sale of the Dorchester County subdivisions. Exhibit A to Settlement Agreement, Testimony of Sharon G. Scott at P. 3, l. 9 through P. 19, l. 8; Exs. SGS-1 and SGS-4; Exhibit B to Settlement Agreement, Testimony of Dawn M. Hipp, Ex. DMH-5. For instance, Scott's pre-filed testimony describes an entry in the ORS Audit thus: "Column (6) reflects the adjustments associated with the proposed Dorchester County transfer which includes King's Grant, Teal on the Ashley, and Plantation Ridge subdivisions. Total Operating Revenues were reduced by ($339,332), Total Expenses by

($259,502), and Rate Base by ($706,152)." Exhibit A to Settlement Agreement, Testimony of Sharon G. Scott at P. 5, ll. 21-22 through P. 6, ll. 1-2; Ex. SGS-1. Significantly, Ms. Scott states that "ORS shows the effects of the proposed Dorchester County transfer . . . .ORS verified the amounts to CWS's books and records". P.13, ll. 19-22. Accordingly, it is clear that financial data on individual CWS subdivisions can be calculated. The Company's failure to provide such information to the Commission regarding the River Hills subsystem interfered with the Commission's ability to successfully determine whether or not any cross-subsidization might be occurring with that subdivision's system. Again, the Commission was prevented from making its determination on just and reasonable rates because of a lack of evidence/information furnished by the parties to this case.

2. Request for information on sewer backups.

As the result of questions raised at the Commission's public hearings, the Commission posed, in its directive of September 6, questions to the Company on whether it kept records of reported backups in its sewer systems. Further, the Commission asked about how many complaints of sewer backups were received within the test year and how these were resolved. In addition, the Commission posed questions regarding the efforts by CWS to prevent sewer backups, and what measures the Company employed to prevent sewer problems, and how they compare to industry standards. CWS failed to provide any information to this Commission on these matters. Sewer backups are a relevant component of the "quality of service" that the Commission must examine to determine if proposed rates are just and reasonable. Failure of the Parties to provide this information

simply leaves us in doubt as to the Company's ability to deal with such backups and as to the quality of service of the Company. The failure to provide the information does not allow us to make a determination as to the effect of this factor on the justness and reasonableness of the Company's rates.

3. Request for information regarding the proposed flat rate fee structure for sewerage services.

As the result of several witnesses complaining about the Company's flat rate fee structure at the Commission's public hearings, the Commission requested information in its Directive of September 6 as to CWS's flat rate charges for residential sewer service. Specifically, the Commission directed the Parties to explain why the Commission should find that flat-rate sewage billing is just and reasonable, and why the Parties believe that a flat-rate billing scheme is superior to one based upon individual usage. Several customers at the public hearings raised inquiries about the fairness of the flat rates, questioning why a single person should pay the same rate for sewer as the rate that a family pays.[14] The Parties failed to furnish any information in response to these questions. Some states follow an established policy of disfavoring flat rate billing.[15] South Carolina determines whether a flat rate billing structure is just and reasonable on a

[14] See Testimony of Owen Brackett, West Columbia hearing, Tr. 81-82 (Vol. 4), testimony of Susan Maleski, Irmo hearing, Tr. 21 (Vol. 1), testimony of John Ryan, Irmo hearing, Tr. 31 (Vol. 1).

[15] See e.g. 1. In re Sanibel Bayous Utility Corp. 2003 WL 21383689, Fla.P.S.C., Jun 09, 2003, (NO. 020439-SU, 020331-SU, PSC-03-0699-PAA-SU) ("It has been our practice that, whenever possible, a flat rate structure is converted to a base facility and gallonage charge rate structure in order to promote state conservation goals and to eliminate subsidization of those who use excessive amounts of water by those who do not. However, it appears that the base facility and gallonage charge rate structure is not economically feasible for this wastewater utility") but see Re Gibbs Ranch Sewer Co., 40 CPUC 2d 761, Cal.P.U.C., Jul 24, 1991, (NO. 91-07-043, 90-09-032) (A sewer utility was directed to implement uniform flat rates for residential customers, and to eliminate any additional charges based on the number of bedrooms on the premises).

case by case basis. Again, without this information and/or evidence, the Commission could not make the proper determination.

4. Request for information regarding the rate case expenses claimed in the Settlement Agreement.

On September 6, 2006, this Commission asked the Company for information explaining how the Company's claimed rate case expenses were prudently incurred. In addition to unamortized rate case expenses from Docket No. 2004-357-WS of $100,277, the Company had requested approval of $385,497 in rate case expenses in its Application. In the Settlement, the Parties proposed to amortize the additional rate case expenses of $385,497 over three years, at the rate of $128,499 per year. The Company also proposed to continue to amortize the $100,277 of rate case expenses from Docket No. 2004-357-WS. The Commission's request for this information was reasonable considering the amount of requested rate case expenses, which are made up of attorney's fees, fees for expert witnesses, and other administrative expenses. The reasonableness of rate case expenses has long been debated before this Commission and before the Courts. For instance, in Porter v. South Carolina Public Service Commission and Carolina Water Service, Inc., 328 S.C. 222, 231, 493 S.E. 92, 97 (1997), the South Carolina Supreme Court affirmed the Commission's order allowing the recovery of an unamortized rate case expense incurred in connection with a prior rate case. Rate case expenses are not solely a concern of our South Carolina Commission. Rate case expenses are commonly considered in rate cases by a number of Commissions around the United States.[16]

[16] See, e.g., Re Pennichuck Water Works, Inc., 71 N.H.P.U.C. 351, N.H.P.U.C, June 4, 1986 (NO. DR 85-2, 18294), (New Hampshire); Application of Associates Utility Co., 9 Tex. P.U.C. Bull. 120, 1983 WL 2007691, Tex. P.U.C., September 28, 1983, (NO. 5100), (Texas); Pennsylvania Public Utility Com'n

Attorney's fees are commonly included in rate case expenses. Rule 407, SCACR 1.5, *Rules of Professional Conduct* sets out the factors that must be examined in order to determine the reasonableness of such fees. The factors are: (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer; (3) The fee customarily charged in the locality for similar legal services; (4) The amount involved and the results obtained; (5) The time limitations imposed by the client or by the circumstances; (6) The nature and length of the professional relationship with the client; (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) Whether the fee is fixed or contingent. See also Condon v. State of South Carolina, 354 S.C. 634, 583 S.E. 2d 430 (2003). None of these factors could have been considered with regard to attorney's fees in the present case, even if this Commission held that they applied in a utility rate case.

In the present case, the pre-filed testimony of ORS witness Sharon Scott outlined the Parties' proposal for amortization of rate case expenses over a three-year period. Some of the expenses proposed for recovery were rate case expenses from a prior CWS docket, Docket No. 2004-357-WS. See Exhibit A to Settlement Agreement, Testimony of Sharon G. Scott at 9. Even after a specific request for further information in the Commission Directive of September 6, 2006, the Company failed to provide further

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v. LP Water and Sewer Co., 79 Pa. P.U.C. 503, 1993 WL 597844, Pa. P.U.C., July 8, 1993 (NO. R-922493, C001-C0128), (Pennsylvania); Re Missouri Cities Water Company, 1993 WL 340004, Mo. P.S.C., Jan. 8, 1993, (NO. WR-92-207, SR-92-208), (Missouri); In re Environmental Disposal Corp., 2000 WL 1471742, N.J.B.P.U., June 7, 2000 (NO. WR99040249, PUC05487-99N), (New Jersey); In re Arizona Water Co., 2004 WL 1109925, Ariz. C.C., March 19, 2004, (NO. W-01445A-02-0619, 66849, ID 139928), (Arizona).

evidence of the prudence of these expenses when it appeared for hearing on September 7. Consequently, the Commission was unable to make the necessary determination of the appropriateness of the expense.

In the present case, the Company's burden of proof on this issue was not satisfied merely because it had an agreement with the Office of Regulatory Staff. The Commission simply did not have enough evidence to be able to evaluate the reasonableness of attorney's fees, specifically, and rate case expenses in general. The complete lack of evidence on rate case expenses, other than the provision of the numbers themselves, severely limited the Commission's ability to make its independent determination in this case. Without the proper evidence before us, we cannot properly evaluate the expenses claimed. See Hilton Head Plantation Utilities, supra.

5. Request for information regarding DHEC violations.

On September 6, 2006, the Commission requested information from the parties about the Company's compliance with PSC regulations that require reporting of violations of DHEC standards. Comm. Directive (dated September 6, 2006). ORS witness Dawn Hipp's prefiled testimony stated that DHEC standards were being met at the CWS systems according to recent DHEC sanitary survey reports and that general housekeeping items are satisfactory. Exhibit B to Settlement Agreement, Testimony of Dawn M. Hipp at P. 6, ll. 2-5. She also stated that ORS inspections showed that all wastewater collection and treatment systems were operating adequately and in accordance with DHEC rules and regulations. P. 6, ll. 10-12. The Business Office Compliance Review attached as Exhibit DMH-3 to her testimony also stated that CWS

was in compliance regarding notices to be filed with the Commission of any violation of PSC or DHEC rules which affect service provided to its customers in accordance with R. 103-514-C and 103.714-C (which require reporting of DHEC violations to the Commission). Ex. DMH-3, p. 3 (No. 11).

This Commission had several questions regarding that testimony in light of the CWS system site reports attached as Exhibit DMH-4 to Hipp's testimony. The Commission therefore asked the parties to explain the scope of her evaluation and conclusions since the system site reports from the Exhibit demonstrated that not all sites were selected for testing (Ex. DMH-4, PP. 1-21), several systems that were inspected were found to be unsatisfactory by DHEC (PP. 7, 20-21), and that customers – but not the Commission – were mailed notice of a RAD sample which had exceeded a Maximum Contaminant Level. (P. 4).

Clearly, the Commission's unanswered questions concerning the Company's compliance with PSC reporting requirements as to DHEC violations arose from the prefiled testimony and inspection reports appended to the Settlement Agreement as described above. However, the parties failed to call any witnesses at the settlement hearing to address the Commission's concerns about compliance with its standards, leaving unresolved questions of fact in the record directly relevant to whether CWS's proposed rates are just and reasonable.

CONCLUSION

While the Parties should be commended for their efforts to resolve this controversy, it is statutorily incumbent upon this Commission to independently determine

whether the proposed rates in a settlement are just and reasonable.[17] See S.C. Code Ann. Section 58-5-210 (1976). Moreover, the Supreme Court mandates that this Commission make findings which are sufficiently detailed to enable the Court to determine whether the findings are supported by the evidence and whether the law has been applied properly to those findings. Porter v. South Carolina Public Service Commission, 333 S.C. 12, 507 S.E. 2d 328 (1998). The evidence presented with the settlement agreement is insufficient to allow us to make findings that are sufficiently detailed to allow the Court to make the requisite determination.

Further, the Commission may exercise its independent judgment in setting rates and is not limited to adopting or rejecting the testimony of witnesses, as long as the Commission's Order is based on the evidence of record. See Kiawah Property Owners Group v. Public Service Commission of South Carolina, 359 S.C. 105, 597 S.E. 2d 145 (2004) (approving the Commission's decision to reject the testimony of a Company accountant when setting an operating margin). Additionally, we take note of and adopt the following language from Citizens Action Coalition of Indiana, Inc. v. PSI Energy, Inc., 664 N.E. 2d 401 (1993):

> We note at the outset that "settlement" carries a different connotation in administrative law and practice from the meaning usually ascribed to settlement of civil actions in a court. While trial courts perform a more passive role and allow the litigants to play out the contest, regulatory agencies are charged with a duty to move on their own initiative where and when they deem appropriate. Any agreement that must be filed and approved by an agency loses its status as a strictly private contract and takes on a public interest gloss. Indeed, an agency may not accept a settlement merely because the private parties are satisfied; rather, an

[17] Additionally, the quality of the Company's service is a recognized and necessary area of concern the Commission must consider in determining whether a proposed rate increase is justified. See Seabrook Island Property Owners Association v. Public Service Commission of South Carolina, supra.

> agency must consider whether the public interest will be served by accepting the settlement. 664 N.E. 2d at 406. [18]

This responsibility does not permit the Commission to merely "act as an umpire blandly calling balls and strikes for adversaries appearing before it; the right of the public must receive active and affirmative protection at the hands of the Commission." Scenic Hudson Preservation Conference v. Federal Power Commission, 354 F. 2d 608, 620 (2d. Cir. 1965).

Mindful of these principles and its statutory duty, this Commission has a separate and independent obligation to review a settlement agreement and its ancillary issues.[19]

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[18] See also Pennsylvania Gas & Water Co. v. Federal Power Com'n, 463 F. 2d 1242, 1246 (D.C. Cir. 1972); Cajun Elec. Power Coop., Inc. v. F.E.R.C., 924 F. 2d 1132, 1135 (D.C. Cir. 1991); C. Koch, Administrative Law and Practice Section 5.81 (Supp. 1995); In re PSI Energy, Inc., 1994 WL 713737, Ind. U.R.C, Sep 07, 1994 (NO. 39498, 39786); In re Minnesota Independent Equal Access Corp., 1993 WL 596041, Minn. P.U.C., Dec. 10, 1993 (NO. P-3007/GR-93-1); Re Minnegasco, Inc., 143 P.U.R. 4th 416, 1993 WL 312274, Minn. P.U.C., May 03,1993 (NO. G-008/GR-92-400); Potomac Elec. Power Co., 10 D.C.P.S.C 22, D.C. P.S.C., Mar. 03, 1989, (NO. 869, 9216); Re Washington Water Power Company, 95 P.U.R. 4th 213, 1988 WL 391268, Idaho P.U.C., July 22, 1988 (NO. U-1008-204, 22042); Re New England Tel. and Tel. Co., 70 N.H. P.U.C. 1036, N.H.P.U.C., December 10, 1985, (NO. DR 84-95, 17988); Public Utility Com'n of Texas v. Southwestern Bell Telephone Co., 960 S.W. 2d 116, Tex. App.-Austin, Sept. 11, 1997.

[19] The Commission's duty to review all proposed settlements and compromises independently to determine whether the resulting rates are just and reasonable is not unique, or even unusual. Courts and administrative bodies are routinely called upon to review proposed settlements in cases where persons or entities who were not participants in settlement negotiations may nonetheless be substantively affected by the resulting settlement proposals agreed to by the participating Parties. For example, in Duncan v. Alewine, 273 S.C. 275, 255 S.E.2d 841 (S.C. 1979), the South Carolina Supreme Court rejected the settlement of a contested estate after finding that the lower court had failed its duty to determine the rights of the non-answering defendants before approving the compromise presented to it by the litigants.

Similarly, both the state and federal class action rules require that the court protect the interests of the class, including absent class members, and any dismissal or compromise of a class action is subject to review and approval by the court. See, S.C.R.C.P. 23(c); F.R.C.P.23(e). The federal rule explicitly provides that the court may approve a settlement "only after a hearing and on finding that the settlement, voluntary dismissal, or compromise is fair, reasonable, and adequate." F.R.C.P. 23(e)(1)(C). This duty cannot be discharged by summarily approving a settlement proposed jointly by the representative plaintiffs and the defendant, even where there have been no appearances by intervenors or objectors. Rather, the court must make a finding that the settlement is fair, reasonable, and adequate. In the present case before us, the Commission likewise has an independent duty to determine whether the settlement proposed by the Parties is just and reasonable.

This duty goes beyond simply accepting what the Parties have placed in front of us in the form of a Settlement Agreement with minimal support. The Commission also has the duty to inquire as to matters which are apparently left unresolved in the settlement agreement, and whether their omission is reasonable. We simply cannot make the proper determinations from the minimal evidence provided by the Parties to this case.

The Commission's duty is not altered by ORS's statutory mandate to represent the public interest. In Bryant v. Arkansas Public Service Commission, 877 S.W. 2d 594 (1994), the Attorney General, who was, in fact, charged by statute with protecting the interests of all the parties in the case, did not join in a settlement Stipulation presented to the Commission. The Court upheld the Arkansas Commission's decision to adopt the settlement, holding that the Commission must make an *independent finding*, supported by substantial evidence in the record, that the settlement resolves the matters in dispute in a way that is fair, just, and reasonable, and in the public interest. We agree with this reasoning.

Even with the participation in the present case of the Office of Regulatory Staff who must, according to law, represent the public interest,[20] we must still make a separate

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The Family Court also is charged with the duty to review independently all settlements. "When approving a settlement agreement, a family court judge must, first, determine if assent to the agreement is voluntarily given, and, second, determine if the agreement is 'within the bounds of reasonableness from both a procedural and substantive perspective.'" Blejski v. Blejski, 325 S.C. 491, 497-98, 480 S.E.2d 462, 466 (S.C. App. 1997), citing Burnett v. Burnett, 290 S.C. 28, 347 S.E.2d 908 (S.C. App. 1986).

[20] The public interest, as represented by the ORS, is statutorily defined as "a balancing of: (1) concerns of the using and consuming public with respect to public utility services, regardless of the class of customer; (2) economic development and job attraction and retention in South Carolina; and (3) preservation of the financial integrity of the state's public utilities and continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services." S.C. Code Ann. Section 58-4-10(B) (Supp. 2005).

and independent finding as to whether or not the settlement results in just and reasonable rates to the ratepayers of Carolina Water Service. This, we simply cannot do, based on the evidence presented to us. Accordingly, we must reject the Settlement Agreement and deny the Application. See Hilton Head Plantation Utilities, Inc. v. Public Service Commission of South Carolina, supra. The Parties' presentation of minimal evidence in this case simply does not allow the Commission to meet its obligation.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Carolina Water Service, Inc. is a utility providing both water and sewer services to residents of South Carolina and is therefore under the jurisdiction of this Commission. The Commission held four public hearings on the Application, in addition to an evidentiary hearing that allowed additional time for members of the public to be heard. The Company's objections to the public testimony and hearing exhibits must be overruled.

2. CWS declined to supplement its application with information sufficiently responsive to the Commission's inquiry with regard to possible subsidization issues.

3. CWS and ORS submitted a settlement agreement along with prefiled written testimony and exhibits.

4. After review of the settlement material, the Commission raised additional concerns involving matters addressed within the material to the attention of the Parties. This Commission had questions regarding the fairness of the proposed uniform rate structure, the Company's response to public witness' reports of sewerage backups and the maintenance of the Company's lines, the Company's proposed flat rate billing tariff for

sewerage services, the proposed recovery of $385,497 in rate case expenses, and the Company's compliance with applicable PSC regulations in regard to notice of violations of applicable DHEC standards, stemming from violations indicated on ORS inspection reports appended to the prefiled written testimony supporting the Settlement.

5. At the settlement hearing, the Parties called only two witnesses to testify in support of the settlement. These witnesses had no knowledge of any of the issues raised by the Commission, therefore, the Parties failed to address these concerns.

6. Based on the settlement hearing, and the lack of evidence provided on the outstanding issues, this Commission voted to reject the Settlement Agreement.

7. The Company and ORS indicated after the ruling rejecting the Settlement Agreement that they did not wish to present further evidence in support of their positions.

8. The application must also be denied, based on the lack of evidence provided by the Parties.

9. The Commission must determine whether or not proposed rates are just and reasonable. See S.C. Code Ann. Section 58-5-210 (1976).

10. The Commission cannot carry out this function if it lacks information relevant to this determination, therefore, it must declare the proposed rates unjust and unreasonable.

11. The Commission has a separate and independent duty to determine whether the rates proposed in a Settlement Agreement are just and reasonable.

12. This duty is not modified when one of the Parties is charged with protecting the public interest.

13. This Commission cannot make the necessary separate and independent determination as to whether or not the public interest would be served by acceptance of the Settlement Agreement in the case at bar, based on the evidence provided by the Parties.

14. The Settlement Agreement must be rejected and the application must be denied.

15 The Company shall continue to have the opportunity to earn an operating margin of 8.13%., a rate of return on rate base of 8.02%, and a rate of return on equity of 9.10%, as set out in Order No. 2005-328.

V. ORDER

1. The Settlement Agreement is rejected.

2. The application for an increase in rates and charges is denied.

3. The Company shall continue to have the opportunity to earn an operating margin of 8.13%, a rate of return on rate base of 8.02%, and a rate of return on equity of 9.10%, all of which were established in Order No. 2005-328.

4. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

G. O'Neal Hamilton, Chairman

ATTEST:

C. Robert Moseley, Vice Chairman

(SEAL)

Special Agenda Item 1

COMMISSION DIRECTIVE

ADMINISTRATIVE MATTERS	☐	DATE	**September 6, 2006**
MOTOR CARRIER MATTERS	☐	DOCKET NO.	**2006-97-WS** **2006-107-WS** **2006-92-WS**
UTILITIES MATTERS	☒		

SUBJECT:

DOCKET NO. 2006-97-WS - Application of Tega Cay Water Service, Incorporated for Adjustment of Rates and Charges and Modifications to Certain Terms and Conditions for the Provision of Water and Sewer Service

- AND -

DOCKET NO. 2006-107-WS - Application of United Utility Companies, Incorporated for Adjustment of Rates and Charges and Modification to Certain Terms and Conditions for the Provision of Water and Sewer Service

DOCKET NO. 2006-92-WS – Application of Carolina Water Service, Incorporated for Adjustment of Rates and Charges for the Provision of Water and Sewer Service

Discuss these Matters with the Commission.

COMMISSION ACTION:

In regards to Docket No. 2006-92-WS, I move that the Commission adopt the attached questions and pose them to the Parties immediately following this meeting.

PRESIDING Hamilton

	MOTION	YES	NO	OTHER
CLYBURN	☐	☒	☐	
FLEMING	☐	☒	☐	
HAMILTON	☐	☒	☐	
HOWARD	☐	☒	☐	
MITCHELL	☐	☒	☐	
MOSELEY	☐	☒	☐	
WRIGHT	☒	☐	☐	

APPROVED	☐
APPROVED STC 30 DAYS	☐
ACCEPTED FOR FILING	☐
DENIED	☐
AMENDED	☐
TRANSFERRED	☐
SUSPENDED	☐
CANCELED	☐
SET FOR HEARING	☐
ADVISED	☐
CARRIED OVER	☐
RECORDED BY	Schmieding

Session: Special

Time of Session 12:30 p.m.

Mr. Chairman, as the parties prepare to present their settlement agreement to the Commission on Thursday, I would like to alert them to some issues that I believe will be important to the Commission in considering this settlement. Therefore, I would move that the Commission request that the parties present testimony and introduce evidence to address the following issues.

A. As to the rates charged to customers in the River Hills subdivision:

In his Rebuttal Testimony, filed as Exhibit D to the Explanatory Brief and Joint Motion for Settlement Hearing and Adoption of Settlement Agreement, Steven M. Lubertozzi testifies: "The Company has never accounted for the River Hills system except as part of our statewide system." *p. 8, ll. 8-20.* Mr. Lubertozzi also testifies that it would be an "inaccurate statement" to assert that the Carolina Water Service customers of the River Hills community in York County are "subsidizing the remainder of the [CWS] water and sewer systems across South Carolina." He also asserts that rates for customers in some newer subdivisions would increase dramatically if the Commission were to depart from uniform billing for the various CWS subsystems.

I would like to have more information and a more detailed explanation regarding these assertions. Some information which I believe would help the Commission understand Mr. Lubertozzi's testimony and decide if the uniform rate structure remains just and reasonable includes:

1. Whether CWS performs periodic calculations of revenues and costs and expenses associated with the operation of water and/or sewer systems in any of its individual service territories in South Carolina, and if so, what this data indicates.

2. If this information is not available, how does Mr. Lubertozzi conclude in his testimony that it would be "inaccurate" to assert that the River Hills customers of CWS subsidize other CWS water and sewer systems in South Carolina ?

3. Inasmuch as Mr. Lubertozzi claims that it would require a "Herculean effort" to determine what rates CWS would charge to the customers

located within the discrete subdivisions or other geographical areas served by the Company, and that the resultant rates would be "wildly disparate" and would cause "different rates in just about every area," (p. 9, ll. 10-16), it would be helpful to know specifically the work that such calculations would require, and an estimate of the staff time and cost involved;

4. A description of the method by which CWS adjusted its rate base data – as evidenced in Ms. Scott's pre-filed testimony and exhibits – to account for sale or transfer of water and/or sewer systems such as those serving the King's Grant and Teal on Ashley subdivisions and a description of the documents and data relied on in performing the calculations. Did CWS provide the information used by witness Scott to make accounting adjustments for the sale of the Kings Grant and Teal on the Ashley service territories? If yes, how did CWS get this disaggregated service territory information ?

B. As to CWS's operations in general.

1. Does CWS maintain records of reported backups in its sewer systems? How many complaints of sewer backups were received within the test year, and how were they resolved?

2. Please elaborate the efforts by CWS to prevent sewer backups. What measures does CWS employ to prevent sewer problems, and how they compare to applicable industry standards?

C. As to CWS's flat rate charges for residential sewer service.

Explain why the Commission should find that flat-rate sewerage billing is just and reasonable? Why do the parties believe that a flat rate billing scheme is superior to one based upon individual usage?

D. As to the settlement's provisions concerning the recovery of rate case expenses.

1. Why are the rate case expenses proposed in the settlement prudently incurred?

2. Do the rate case expenses included in the settlement agreement include any legal or other rate case expenses associated with the Company's appeal of Docket No. 2004-357-WS (the Company's last case)? If so, please provide the dollar amount of such appeal costs.

3. Please provide a breakdown by dollar amount of what is included in rate case expenses for this case such as legal, consulting, etc.?

E. Regarding CWS's compliance with DHEC standards.

Dawn Hipp's prefiled testimony states that DHEC standards were being met at the CWS systems according to recent DHEC sanitary survey reports and that general housekeeping items are satisfactory. She also states that ORS inspections showed that all wastewater collection and treatment systems were operating adequately and in accordance with DHEC rules and regulations. The Business Office Compliance Review attached to her testimony also states that CWS is in compliance regarding notices to be filed with the Commission of any violation of PSC or DHEC rules which affect service provided to its customers in accordance with R.I03-514-C and 103.714-C (which require reporting of DHEC violations to the Commission). Several questions arise regarding that testimony in light of the site reports attached as DMH4 to her testimony.

It would be helpful for the parties to explain the scope of her evaluation and conclusions since not all sites were selected for testing, several systems that were inspected were found to be unsatisfactory by DHEC, and that customers – but not the Commission – were mailed notice of a RAD sample which had exceeded the Maximum Contaminant Level.

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

DOCKETING DEPARTMENT

NOTICE OF FILING AND HEARING

DOCKET NO. 2006-92-WS

CAROLINA WATER SERVICE, INC. – APPLICATION FOR ADJUSTMENT OF RATES AND CHARGES FOR THE PROVISION OF WATER AND SEWER SERVICE

Carolina Water Service, Inc. (CWS or the Company) has filed an Application with the Public Service Commission of South Carolina (the Commission) for an adjustment of the Company's rates and charges and modification of certain terms and conditions for the provision of water and sewer service. CWS is a public utility, as defined by S.C. Code Ann. § 58-5-10(3) (Supp. 2005), providing water and sewer service to the public for compensation in certain areas of South Carolina pursuant to rates approved by the Commission in Docket No. 2004-357-WS.

Pursuant to S.C. Code Ann. § 58-5-240 (Supp. 2005) and 26 S.C. Code Ann. Regs. 103-712.4.A and 103-512.4.A (Supp. 2005), the Company requests that the Commission approve an increase in its monthly water and sewer service.

In support of its request for an adjustment in the Company's water and sewer rates, terms and conditions CWS asserts, among other things, that the proposed water and sewer rate increases are necessary in order that it may provide reasonable and adequate service to its customers, comply with standards and regulations set by the Department of Health and Environmental Control and other governmental agencies which regulate the environmental aspect of the Company's business, and earn a reasonable return on its investment and attract capital for future improvements. The Company also asserts that the proposed water and sewer rate increases are necessary to preserve its financial integrity and to permit continued investment in and maintenance of its facilities so as to provide reliable and high quality services.

THE PROPOSED CHANGES IN THE RATES AND CHARGES ARE SET FORTH BELOW
(The complete rate schedule is available from the Company at the address below and on the Commission's website at www.psc.sc.gov)

WATER

Monthly Charges	Current	Proposed
Residential (single family houses, condominium, mobile home, apartment unit)		
Basic Facilities Charge	$10.25 per unit	$11.61 per unit
Commodity Charge	$3.32 per 1,000 gallons or 134 cft	$3.55 per 1,000 gallons or 134 cft
Commercial		
Basic Facilities Charge		
By Meter Size		
5/8" meter	$10.25	$11.61
1" meter	$25.62	$29.02
1.5" meter	$51.25	$58.04
2" meter	$82.00	$92.86
3" meter	$164.00	$174.12
4" meter	$256.25	$290.20
Commodity Charge	n/a	n/a
Charge for Water Distribution Only		
Residential		
Basic Facilities Charge	$10.25	$11.61
Commodity Charge	$1.90 per 1,000 gallons or 134 cft	$2.03 per 1,000 gallons or 134 cft
Commercial		
Basic Facilities Charge		
By Meter Size		
5/8" meter	$10.25	$11.61
1" meter	$25.62	$29.02
1.5" meter	$51.25	$58.04
2" meter	$82.00	$92.86
3" meter	$164.00	$174.12
4" meter	$256.25	$290.20
Commodity Charge:	$1.90 per 1,000 gallons or 134 cft	$2.03 per 1,000 gallons or 134 cft

SEWER

Monthly Charges	Current	Proposed
Residential monthly charge Per single-family house, condominium, villa, or apartment unit	$36.46 per unit	$42.40 per unit
Mobile Homes – monthly charge	$26.20 per unit	$30.47 per unit
Commercial – monthly charge	$36.46 per SFE	$42.40 per SFE
Charge for Sewer Collection Only Residential – monthly charge per single-family house, condominium, or apartment unit	$23.47 per unit	$27.30 per unit
Commercial – monthly charge Per single-family equivalent	$23.47 per SFE	$27.30 per SFE
Wholesale Monthly Charge (Midlands Utility)	$15.00 per SFE	$17.45 per SFE

A copy of the Company's Application can be obtained from the Commission at the following address: Public Service Commission of South Carolina, Docketing Department, P.O. Drawer 11649, Columbia, South Carolina 29211. Additionally, CWS's Application is available on the Commission's website at www.psc.sc.gov.

In order for testimony and evidence to be received from all interested parties, a public hearing will be held in the Commission's Hearing Room, Synergy Business Park, 101 Executive Center Drive, Columbia, S.C. on **Thursday, July 20, 2006 and Friday, July 21, 2006 at 10:30 a.m.**

Any person who wishes to participate in this matter, as a party of record with the right of cross-examination should file a Petition to Intervene in accordance with the Commission's Rules of Practice and Procedure, on or before **May 6, 2006,** and indicate the amount of time required for his presentation. Please include an email address for receipt of future Commission correspondence in the Petition to Intervene. ***Please refer to Docket No. 2006-92-W/S.***

Any person who wishes to testify and present evidence at the hearing should notify the Docketing Department in writing at the address below, the Office of Regulatory Staff, Post Office Box 11263, Columbia, South Carolina 29211 and John M. S. Hoefer, Esquire, Willoughby & Hoefer, P.A., Post Office Box 8416, Columbia, South Carolina 29202-8416 on or before **May 6, 2006**, and indicate the amount of time required for his presentation. ***Please refer to Docket No. 2006-92-W/S.***

Any person who wishes to request a hearing in his or her county of residence should notify before June 6, 2006, in writing, the Docketing Department at the address below, the Office of Regulatory Staff, Post Office Box 11263, Columbia, South Carolina 29211 and John M. S. Hoefer, Esquire, Willoughby & Hoefer, P.A., Post Office Box 8416, Columbia, South Carolina 29202-8416. *Please refer to* ***Docket No. 2006-92-W/S.***

Any person who wishes to be notified of any change in the hearing date, but does not wish to present testimony or be a party of record, may do so by notifying the Docketing Department in writing at the address below on or before **May 6, 2006.** ***Please refer to Docket No. 2006-92-W/S.***

PLEASE TAKE NOTICE: Any person who wishes to have his or her comments considered as part of the official record of this proceeding **MUST** present such comments, in person, to the Commission during the hearing.

Persons seeking information about the Commission's Procedures should contact the Commission in Columbia at 803-896-5100.

Public Service Commission of South Carolina
Attn: Docketing Department
Post Office Drawer 11649
Columbia, SC 29211

04/06/06

cba

Laura P. Valtorta

Attorney at Law

903 Calhoun Street
Columbia, SC 29201
(803) 771-0828
Fax (803) 765-9261

May 3, 2006

The Hon. Charles Terreni
Chief Clerk/Administrator
SC Public Service Commission
101 Executive Center Drive, Suite 100
Columbia, SC 29210

RE: Carolina Water Service; docket number 2006-92-WS

Dear Mr. Terreni:

The residents of Forty Love Point have the following comments to make in opposition to any rate increase by Carolina Water Service. I am acting as a member of the homeowners' board, not their legal representative.

1. HIGH MINERAL CONTENT. Residents complain that their kitchen fixtures, glass shower stalls and plumbing fixtures have been ruined by the high calcium and mineral content in the water provided by Carolina Water Service. One six-year resident of the neighborhood notes that he has replaced his toilet valves twice because of the minerals. Many residents are forced to use in-house filtering systems.

2. CHLORINE TASTE AND SMELL. At Forty Love Point, many residents purchase drinking water because the tap water provided by Carolina Water Service tastes bad and smells bad.

3. LACK OF FIRE HYDRANTS. Carolina Water Service does not provide fire hydrants in our neighborhood.

4. LOW PRESSURE. When residents complain to Carolina Water Service about low water pressure in their homes, Carolina Water does nothing to correct the problem.

5. HIGH PRICES. We already pay more than other area residents for water, and the quality of our water is worse. We are totally against a rate increase.

Our complaints to Carolina Water have gone largely unheeded. This is according to reports from several residents who have lived in the subdivision for several years.

We plan to send a representative to the hearing on July 20, 2006.

Sincerely,

Laura P. Valtorta

Laura P. Valtorta
Forty Love Point Homeowners' Association

Cc: Lessie Hammonds, esquire
Office of Regulatory Staff
P.O. Box 11263
Columbia, SC 29211
737-0800

1975
S.A 415
ORS

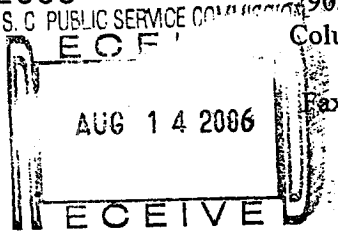
Laura P. Valtorta

Attorney at Law

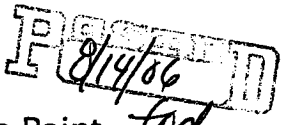
903 Calhoun Street
Columbia, SC 29201
(803) 771-0828
Fax (803) 765-9261

August 11, 2006

The Hon. Charles Terreni
Chief Clerk/Administrator
SC Public Service Commission
101 Executive Center Drive, Suite 100
Columbia, SC 29210



RE: Carolina Water Service; docket number 2006-92-WS



Dear Mr. Terreni:

Recently, on May 3, 2006, the residents of Forty Love Point sent a list of complaints in anticipation of the hearing which has been rescheduled for September 7 and 8, 2006.

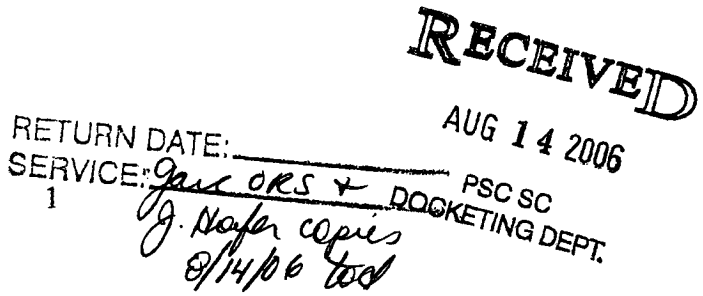
Since that time, we have experience increasing problems with water quality and pressure. The water has been cloudy off and on, and residents have had a significant drop in pressure. DHEC has been called to conduct a test of the water.

Please add this to our comments from May 3, 2006.

The residents express a strong desire to change water carriers from Carolina Water to Columbia Water service but are unsure how to accomplish this goal.

Here is a recap of our complaints from May 3, 2006. We have seen no relief in the situation.

1. HIGH MINERAL CONTENT. Residents complain that their kitchen fixtures, glass shower stalls and plumbing fixtures have been ruined by the high calcium and mineral content in the water provided by Carolina Water Service. One six-year resident of the neighborhood notes that he has replaced his toilet valves twice because of the minerals. Many residents are forced to use in-house filtering systems.



RETURN DATE: _____
SERVICE: Jan ORS + J. Hofer copies 8/14/06 tod
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2. CHLORINE TASTE AND SMELL. At Forty Love Point, many residents purchase drinking water because the tap water provided by Carolina Water Service tastes bad and smells bad.

3. LACK OF FIRE HYDRANTS. Carolina Water Service does not provide fire hydrants in our neighborhood.

4. LOW PRESSURE. When residents complain to Carolina Water Service about low water pressure in their homes, Carolina Water does nothing to correct the problem.

5. HIGH PRICES. We already pay more than other area residents for water, and the quality of our water is worse. We are totally against a rate increase.

Our complaints to Carolina Water have gone largely unheeded. This is according to reports from several residents who have lived in the subdivision for several years.

Sincerely,

Laura P. Valtorta

Laura P. Valtorta
Forty Love Point Homeowners' Association

Cc: Columbia Water Service
Attention: Bill Bowman
300 Laurel Street
Columbia, SC 29201

questions, please.

CHAIRMAN HAMILTON: Yes, ma'am.

CROSS EXAMINATION BY MS. HUDSON:

Q Good morning, Mr. Hershey.

A Good morning.

Q Are you aware that a Management Audit is currently being performed by an outside firm on CWS and its South Carolina affiliates and that the audit began approximately three months ago?

A I am aware that there was a letter that was sent that the request for bid was accepted, that the audit company had not been picked, and that was the last letter, last documentation that we received. If the audit is going on, then we aren't aware of that.

MS. HUDSON: Thank you, Mr. Chairman. That's all my questions.

CHAIRMAN HAMILTON: Thank you.

Commissioners?

[*No Response*]

CHAIRMAN HAMILTON: You may be excused, Mr. Hershey.

MR. TERRENI: Mr. Chairman, we have one more public witness who signed the list, Laura Valtorta.

WHEREUPON, Laura P. Valtorta, first being duly sworn, assumes the stand and testifies as follows:

TESTIMONY OF MS. VALTORTA:

Good afternoon. My name is Laura Valtorta, and I'm representing the Forty

Love Point Homeowners Association, which is near Chapin. We have about 100 households there and it should go to about 140. We're experiencing a lot of growth right now. I find that this hearing – I'm using this as a way to gain information about the process because I've been on the Homeowners Association for a few months. I am an attorney, but this is not my area of practice. We're trying to find out how we can gain some standing and strength to complain about this water service. I just learned today that we could have become a party of record. We did not know that. I just learned today that we could file a formal complaint against the water service or an informal complaint through the Office of Regulatory Staff. We did not know that. I'm ashamed to say I didn't know that even though I'm an attorney practicing in a different area. But, I need to put on the record that we have complaints about, serious complaints about the quality of water.

First of all we feel that we're not being serviced by enough wells. The water pressure is often low. This complaint has been going on, as I understand it, for about 15 years. From other residents we understand at the Homeowners Association, this happens frequently, particularly when there hasn't been a lot of rain. The quality of water, most of us refuse to drink this water. It looks cloudy, discolored. This happens every few months. It looks like you just don't want to drink it. It smells bad. You want to boil it before you drink it. In our neighborhood, we do not have any fire hydrants. We're very concerned about that, even though some of the households are on the lake, we feel as though we need fire hydrants in particular for the interior lots. The service when people call about broken water pipes, et cetera, the service is late. They don't respond very well. I've heard this from many of my neighbors.

I just wanted to put this on the record on behalf of Forty Love Point and state that we are totally against any sort of rate increase. We realize we're paying more than our neighbors down the street for what we consider to be bad service. We would like to see some changes in this, and we also intend to file either an informal or a formal complaint. We move into this subdivision and we find that the water quality is bad, and we don't understand how we can affect a change. Everyone wants Columbia water service. They don't want Carolina Water Service. We have no idea how to bring this about. We feel as though, kind of like we're powerless, our hands are tied. I just wanted to bring a voice of my neighborhood association about that.

CHAIRMAN HAMILTON: Thank you, ma'am.

Mr. Hoefer, did you have any questions, sir?

MR. HOEFER: Just briefly, Mr. Chairman.

CROSS EXAMINATION BY MR. HOEFER:

Q Good afternoon, Ms. Valtorta. Is your office on Calhoun Street?

A That's correct.

Q We used to be neighbors. Let me ask you, did you see the – you are a customer of the Company, correct?

A I am a customer.

Q Did you receive a Notice of Filing and Hearing in this case from the Company?

A No.

Q You did not get one?

A No.

Q How did you learn about the case?

A I learned about it through – on my water bill, it was noted and then afterwards I went online. And, another complaint that we have is that the Settlement – I just happened to see it yesterday online because I was checking the time of the hearing. We had no idea that this was going to happen. As I said, I wish that I knew – had known ahead of time that we could have been a party of record because we [INAUDIBLE], but we didn't know that.

Q Okay. Thank you.

CHAIRMAN HAMILTON: Thank you, Mr. Hoefer. Ms. Hudson, do you have any questions?

MS. HUDSON: Mr. Chairman, ORS has no questions.

CHAIRMAN HAMILTON: Thank you. Commissioners?

[*No Response*]

CHAIRMAN HAMILTON: You may be excused. Thank you, ma'am, for appearing.

I believe this – is this – do we have any other public witnesses signed up?

MR. TERRENI: There are no other public witnesses signed up, Mr. Chairman. I don't know if there any in attendance that would like to testify that did not sign up.

[*No Response*]

CHAIRMAN HAMILTON: It appears that now would probably be a good time, if the parties are in

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE PUBLIC SERVICE COMMISISON
OF SOUTH CAROLINA

Docket No. 2006-92-W/S

South Carolina Office of Regulatory Staff, ...Appellant,

v.

Carolina Water Service, Inc.,.....Respondent.

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day one (1) copy of **Appellant's Return to Notice of Motion and Motion and Amended Notice of Motion and Motion To File An Amicus Curiae Brief on Behalf of Forty Love Point Homeowners' Association and Memorandum in Support of Appellant's Return to Notice of Motion and Motion and Amended Notice of Motion and Motion To File An Amicus Curiae Brief on Behalf of Forty Love Point Homeowners' Association** of via hand delivery addressed as follows:

Charles L.A. Terreni, Esquire
Chief Clerk & Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29210

This is to further certify that I have caused to be served this day one (1) copy of **Appellant's Return to Notice of Motion and Motion and Amended Notice of Motion and Motion To File An Amicus Curiae Brief on Behalf of Forty Love Point Homeowners' Association and Memorandum in Support of Appellant's Return to Notice of Motion and Motion and Amended Notice of Motion and Motion To File An Amicus Curiae Brief on Behalf of Forty Love Point Homeowners' Association** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

John M.S. Hoefer, Esquire
Benjamin P. Mustian, Esquire
Willoughby & Hoefer, P.A.
Post Office Box 8416
Columbia, South Carolina 29202-8416

Laura P. Valtorta, Esquire
903 Calhoun Street
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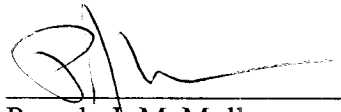

Pamela J. McMullan

Columbia, South Carolina
This 27th day of December, 2007